



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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DALLAS, TX 75202-2733

JUL 9 2010

Col. Alvin B. Lee
District Commander
Corps of Engineers, New Orleans District
P.O. Box 60267
New Orleans, LA 70160-0267

Dear Col. Lee:

This is written in response to your letter dated June 18, 2010, regarding issues related to the Bayou aux Carpes Clean Water Act Section 404(c) determination and construction of Section WBV-14e.2 of the Greater New Orleans Hurricane and Storm Damage Risk Reduction System Project.

The approved alternative for this section of work was to involve no action within the restricted 404(c) area. The selected alternative documented in Individual Environmental Reports (IER) 12 and 14, as a part of the alternative National Environmental Policy Act (NEPA) process, called for a protected side only shift. The IER states: "A flood side shift within this reach would significantly impact the Bayou Aux Carpes wetland area and was removed from further consideration because of a lack of environmental and social acceptability." EPA comments on the NEPA documents for these project segments and the July 28, 2009, modification of the Bayou aux Carpes Clean Water Act (CWA) Section 404(c) determination to accommodate this project were predicated upon an understanding that the only impacts to the Bayou aux Carpes CWA Section 404(c) site would occur on the eastern side, at the site of the West Closure Complex floodwall construction.

However, on April 28, 2010, we were advised by the National Park Service (NPS) that the New Orleans District Corps of Engineers was preparing to clear and grub wetlands on the western side of the Bayou aux Carpes 404(c) area along the V Levee. Subsequent conversations between EPA, NPS, and the Corps resulted in a stop work order being issued by the Corps before there was a violation.

It appears the engineering design provided to the Corps contractors called for unauthorized work within the Bayou aux Carpes CWA Section 404(c) site wetlands. This is a significant departure from the selected project alternative that was identified and evaluated through the NEPA and interagency review processes.

EPA staff asked the Corps to provide a written explanation of what happened, why, and measures to prevent these recurring problems. Your letter of June 18, 2010 responds to that request in part. We await a full explanation of: 1) why the engineering design did not reflect the selected NEPA alternative; 2) what measures are being taken to rectify this error; 3) what the plans are for notifying the public; 4) what additional measures are being taken to insure the integrity of the entire Bayou aux Carpes CWA Section 404(c) area; and 5) what measures the Corps plans to take to insure that current and future Corps of Engineers staff and managers in the engineering,

real estate, and environmental offices have a working knowledge of the terms and conditions of the Bayou aux Carpes CWA Section 404(c) 1985 determination and the 2009 modified determination.

Please also provide us with an update on the progress of Corps hydrology and water quality studies to analyze the ecological impacts of providing freshwater flows from the Estelle Pump Station Canal into the northern section of the Bayou aux Carpes site and of gapping or re-grading interior canals, plugging the old Southern Natural Gas Pipeline Canal, and opening the plug at the juncture of Bayou aux Carpes and the Barataria Waterway.

In the course of conversations between our staff following the issuance of the stop work order, EPA advised your office to perform a jurisdictional wetland determination along the area in question and to survey that wetland boundary along the V Levee. Although we have been told those tasks have been completed, we have not received any documentation of the findings. Please forward that information as soon as possible. If we agree with those findings, that regulatory determination will represent the current wetland boundary.

The Bayou aux Carpes CWA Section 404(c) determinations apply to those wetlands and all others within the Bayou aux Carpes site, as described in the 1985 EPA determination. Please note that a number of factors can alter the ecological conditions of the area, including hurricanes and other storms, subsidence, invasive species, altered hydrology, and successional changes. Wetlands are not static. If ecological conditions significantly change prior to implementation of this project, an updated wetland jurisdictional determination might be required. Likewise, any additional work or maintenance proposed at some time in the future, consistent with the CWA Section 404(c) determination, might require an updated wetland determination.

The 1985 EPA Final Determination applies to wetlands within the area specified by that documentation, which may be found on the Corps' website for the Greater New Orleans Hurricane and Storm Damage Risk Reduction System Project, at http://www.nolaenvironmental.gov/nola_public_data/projects/usace_levee/docs/original/BayouAuxCarpes404cFinalDetVol1_3.pdf. As described in that document, the Bayou aux Carpes CWA Section 404(c) restrictions apply to wetlands regulated by the Clean Water Act within the area "bounded on the north by the east-west Estelle Pumping Station Outfall Canal, on the east by the Plaquemine-Jefferson Parish line and the Bayou Barataria (Intracoastal Waterway), on the south by Bayou Barataria and Bayou des Familles and on the west by State Highway 3134 and the "Vee-Levee" Pipeline Canal..."

In summary, the current project design problem occurred on the western boundary of the 404(c) area and is not in the same location as the construction violation on the eastern boundary at the West Closure Complex, which was resolved only several months ago. Although no CWA Section 404(c) violation may have occurred in this instance, it was precluded only by the diligent attention of the NPS. During the construction of this Corps storm damage risk reduction project, we must depend in large part on the Corps of Engineers to be another federal guardian of the

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Bayou aux Carpes CWA Section 404(c) wetland site and to properly implement the requirements of the EPA determination.

If you have further questions about this or any related matter, please feel free to call me at 214- 665-3187 or have your staff contact Barbara Keeler at 214-665-6698.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'WK Honker', written over a horizontal line.

William K. Honker, P.E.
Deputy Director, Water Quality Protection Division
Senior Policy Advisor for Coastal Restoration

cc: Carol A. Clark, National Park Service
David Muth, National Park Service
Horst Greczmiel, Counsel on Environmental Quality
Rick Hartman, NOAA Fisheries
David Walther, US Fish and Wildlife Service
Steve Mathies, Office of Coastal Restoration and Protection
Greg DuCote, Louisiana Department of Natural Resources